

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
LITTLE BEAVER CREEK BASIN (39FJ)
INTERLOCUTORY DECREE

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CLAIMANTS: E. Alan Hutchinson; Marilyn Hutchinson

CASE 39FJ-0007-I-2023
39FJ 30123448

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 39FJ 30123448 appeared in the Interlocutory Decree for Little Beaver Creek (Basin 39FJ) issued on September 22, 2022. The claim is owned by Marilyn and E. Alan Hutchinson. The claim received issue remarks. Issue remarks are notations

identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

The claim is consolidated into Case 39FJ-0007-I-2023 for purposes of this Master's Report.

FINDINGS OF FACT

1. Claim 39FJ 30123448 was decreed as a domestic claim for a well in the SWSWNW of Section 20, T3N, R59E, Carter County.

2. The claim was decreed with a flow rate of 20.00 GPM.

3. The claim received the following issue remark:

AN AMENDMENT WAS SUBMITTED ON 03/24/2022 REQUESTING TO AMEND THE FLOW RATE .
THE AMENDMENT HAS NOT BEEN IMPLEMENTED AS IT HAS NOT BEEN SIGNED BY ALL OWNERS
OF DNRC RECORD.

4. The amendment requests increasing the flow rate to 25.00 GPM.

5. The well claimed by 39FJ 30123448 is also claimed by 39FJ 27525-00.
Claim 39FJ 27525-00 has a flow rate of 25.00 GPM.

5. The amendment was signed by R. Alan Hutchinson but not Marilyn Hutchinson.

6. A July 21, 2023 deadline was set for Marilyn Hutchinson to file a signed statement agreeing with the amendment.

7. On July 17, 2023, Shannon Hutchinson contacted the Court. Shannon is Marilyn's daughter. Shannon stated that Marilyn passed away and a death certificate was mailed to the DNRC Billings Regional Office.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. After the issuance of a temporary preliminary decree and close of the objection period in a basin, a claimant may amend their Statement of Claim. Section 85-2-233(6), MCA.

5. A claimant asserting an amendment to its claim has the burden to show that the historical use of the claim is accurately reflected by the requested amendment. *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

CONCLUSION OF LAW

1. The issue remark overcomes the prima facie status of claim 39FJ 30123448 and the flow rate should be modified accordingly.

RECOMMENDATIONS

1. The flow rate of claim 39FJ 30123448 should be modified to 25.00 GPM.
2. The issue remark should be removed from claim 39FJ 30123448.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

E Alan Hutchinson
Marilyn Hutchinson
PO Box 426
Ekalaka, MT 59324

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BEAVER CREEK
BASIN 39FJ**

Water Right Number: 39FJ 30123448 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: E ALAN HUTCHINSON
PO BOX 426
EKALAKA, MT 59324 0426

MARILYN HUTCHINSON
PO BOX 426
EKALAKA, MT 59324 0426

Priority Date: AUGUST 1, 1971

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 1.00 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: GROUNDWATER

Source Type: GROUNDWATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	20	3N	59E	CARTER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		SWSWNW	20	3N	59E	CARTER

Total: 0.50